

1966

Present : Sirimane, J.

S. A. DINGIRI BANDA, Appellant, and INSPECTOR OF POLICE,  
ARANAYAKA, Respondent

*S. C. 949/66—M. C. Kegalla, 54091*

*Penal Code—Section 311—“Grievous hurt”.*

The mere fact that a person was in hospital for twenty days is not sufficient to prove that he was suffering from grievous hurt within the meaning of section 311 of the Penal Code.

**A**PPEAL from a judgment of the Magistrate's Court, Kegalla.

*Neville Wijeratne*, for the accused-appellant.

*F. C. Perera*, Crown Counsel, for the Attorney-General.

September 30, 1966. SIRIMANE, J.—

The accused-appellant has been convicted of causing grievous hurt under grave and sudden provocation, and sentenced to four months' rigorous imprisonment.

It was urged in appeal that it has not been established that the injury was grievous. The injury was an incised wound on the left forearm cutting the muscles. The prosecution apparently relied on the 8th kind of hurt described in section 311 of the Penal Code as grievous, namely, that this injury was one which caused the sufferer to be, during the space of twenty days, in severe bodily pain or unable to follow his ordinary pursuits.

The prosecution does not, however, appear to have paid much attention to proof of this fact. There were two doctors called and neither of them could say how long the injured man was in hospital, though one of them expressed an opinion that he would not have been able to use his hand for twenty-one days; but this doctor saw him only on the date of admission and not thereafter.

The injured man himself has stated (to use his words) “Altogether I was twenty-one days in hospital”. On the first day that he gave evidence he had said that he was a “contractor” and on the second that he was a “cultivator”. He has not said, however, that he was unable to follow his ordinary pursuits, and one cannot infer this from the meagre evidence

available in this case. This Court has held in *Silva v. Gunasekera*<sup>1</sup> that the mere fact that a person has been in hospital for twenty-one days is not sufficient to prove that he was suffering from grievous hurt.

I think the prosecution has not established beyond reasonable doubt that the injury in this case was grievous. I alter the conviction to one of voluntarily causing hurt under provocation under section 325 of the Penal Code and sentence the accused-appellant to one month's rigorous imprisonment.

*Conviction altered.*

<sup>1</sup> (1942) 43 N. L. R. 404.

---